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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

**SEARS HOLDINGS CORPORATION, *et al.*,
Debtors.**

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**OBJECTION OF CITY OF MINNEAPOLIS TO (A) NOTICE OF CURE COSTS AND
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE
TRANSACTION; AND (B) THE GLOBAL ASSET SALE TRANSACTION**

The City of Minneapolis hereby files this objection (the “Objection”) to (a) the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the “Cure Notice”); and (b) the Global Asset Sale Transaction, as described and defined in the Notice of Successful Bidder and Sale Hearing [Docket No. 1730] (the “Successful Bidder Notice”). In support of this Objection, the City of Minneapolis states as follows:

BACKGROUND RELATING TO THE BANKRUPTCY PROCEEDING

1. Beginning on October 15, 2018 and continuing thereafter, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. On November 19, 2018, the Court entered the Order Approving Global Bidding Procedures and Granting Related Relief [Docket No. 816].

3. On January 18, 2019, the Debtors filed the Successful Bidder Notice, which, among other things, announced that the Debtors determined that the offer submitted by Transform Holdco, LLC (the “Buyer”), established by ESL Investments, Inc., to acquire all or substantially all of the Global Assets, was the highest or best offer for the Global Assets. A copy of the asset purchase agreement between the Debtors and the Buyer (the “Asset Purchase Agreement”) is attached to the Successful Bidder Notice as Exhibit B.

4. On January 18, 2019, the Debtors filed the Cure Notice. Exhibit B to the Cure Notice identifies as Real Estate Lease 195 a Ground Lease between Troy Coolidge No. 42 LLC and the City of Minneapolis with a cure amount of \$0. *See* Cure Notice, Exhibit B.

5. Troy Coolidge No. 42, LLC did not file a bankruptcy petition and is not a debtor in these proceedings.

BACKGROUND RELATING TO THE GROUND LEASE

6. The City of Minneapolis is the fee owner of certain real property located at 10 West Lake Street in Minneapolis, Minnesota (the “Premises”). Kmart Corporation currently operates a Kmart store on the Premises.

7. The City of Minneapolis’s fee interest in the Premises is subject to a ground lease dated February 23, 1978, that, after a number of assignments over the years, is currently between

the City of Minneapolis, as landlord, and Troy Coolidge No. 42, LLC, as tenant (the “Ground Lease”).

OBJECTION

8. Section 365(a) of the Bankruptcy Code provides that “the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease **of the debtor.**” 11 U.S.C. § 365(a) (emphasis added).

9. The Ground Lease is not an unexpired lease of the debtor. Troy Coolidge No. 42 LLC – the City of Minneapolis’s counterparty under the Ground Lease – is not a debtor in these chapter 11 cases. The Debtors are proposing to assume and assign a lease to which they are not a party.

10. Section 365 of the Bankruptcy Code does not allow a debtor to assume and assign a lease to which the debtor is not a party. *See, e.g., In re Green*, 504 B.R. 675, 679 (Bankr. S.D. Ga., 2014).

RESERVATION OF RIGHTS

11. The City of Minneapolis continues to review the Asset Purchase Agreement, the proposed sale order and other relevant documents and information that have been or will be filed with the Court. Accordingly, the City of Minneapolis expressly reserves the right to amend, supplement, and/or modify this Objection and to file in the future additional appropriate pleadings.

[Remainder of page intentionally left blank.]

WHEREFORE, the City of Minneapolis respectfully requests that this Court enter an Order prohibiting the Debtors to sell, assume and assign, or otherwise transfer the Ground Lease to the Buyer, and granting to the City of Minneapolis such other and further relief as is just and appropriate.

Dated: January 25, 2019

Mayerson & Hartheimer, PLLC
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